

**FRANCHISE AGREEMENT:
CITY OF AMARILLO TEXAS AND SOUTHWESTERN PUBLIC SERVICE COMPANY**

This agreement is made by and between the City of Amarillo, a home rule municipal corporation situated in Potter and Randall Counties, Texas, (hereafter “City” or “Amarillo”) and SOUTHWESTERN PUBLIC SERVICE COMPANY (hereafter, “Company” or “SPS”), which agree as follows:

SECTION 1. GRANT OF AUTHORITY.

There is hereby granted to Southwestern Public Service Company, its successors and assigns (herein called “Company”), the right, privilege and franchise (“Franchise”) to construct, extend, maintain and operate in, along, under and across the Public Rights-of-Way of Amarillo, Texas as it exists as of the effective date of this Franchise and such additional areas as may be included in the corporate limits of the City during the term of this Franchise. (herein called “City”) an Electric Transmission and Distribution System (“System”) consisting of electric power lines, with all necessary or desirable appurtenances (including underground conduits, poles, towers, wires, transmission lines and other structures, and telephone and communication lines for its own use), for the purpose of supplying electricity to the City, the inhabitants thereof, and persons, firms and corporations beyond the corporate limits thereof for the term set out in Section 12. For purposes of this Ordinance, “Public Right-of-Way” shall mean public roads, streets, avenues, lanes, boulevards, alleys, highways, sidewalks, and bridges. This Franchise does not grant to the Company the right, privilege or authority to engage in any other business within the City other than the transmission and distribution of electric power in the City.

SECTION 2. PURPOSE.

A. The provisions set forth in this Agreement represent the terms and conditions under which Company shall construct, operate, and maintain the System within the City. In granting this Franchise, the City does not in any manner surrender or waive its regulatory or other rights and powers under and by virtue of the Constitution and statutes of the State of Texas as the same may be amended, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

B. Not included in this Franchise are any facilities (including any equipment attached in any way to Company’s facilities, whether owned by the Company or not) that provide data delivery, cable service, telephone service, and/or any other service or product not required by Company in support of Company’s electric operations. To the extent that Company installs or permits to be installed facilities in the City’s rights-of-way that are not necessary for the transmission and delivery of electric service, Company will seek a separate franchise from City. The Company shall not be required to obtain a separate franchise in order for the Company to allow “pole attachments,” including attachment to a pole, duct, conduit, or other facility owned or controlled by the Company in the Public Right-of-Way.

SECTION 3. OCCUPATION OF RIGHT-OF-WAY.

A. Company is a Service Provider, as defined in § 4-6-201, City Code, and is subject to the provisions of Chapter 4-6, Article V thereof. Company's occupation of the Public Rights-of-Way is further governed by and conditioned upon Company's compliance with any provisions in the City Code related to right-of-ways, as of the effective date of the Franchise and as amended from time to time.

B. Company shall have the authority to trim trees or other natural growth overhanging any of its utility system or facilities so as to reasonably prevent branches from coming in contact with the Company's wires, cables, or other equipment; however, the Company shall not engage in excessive trimming. The Company shall ensure compliance with the North American Electric Reliability Corporation's Transmission Vegetation Management Program, reliability standard FAC-003-1, the safety requirements for pruning repairing, maintaining, and removing trees endorsed by the American National Standards Institute (specifically the ANSI A300 pruning standards, and state law. Except during an emergency or the recovery after an emergency, Company shall notify the City and its residents as least three days prior to entering onto property to perform any tree trimming activities. The Company further agrees that, within one year of its acceptance of this franchise, and on a yearly basis thereafter, the Company will engage in a campaign to educate its customers within the City through bill inserts or other reasonable method regarding prudent tree selection and planting around power lines.

SECTION 4. INDEMNITY.

A. The Company shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings actions, demands, causes of action, liability, and suits of any kind and nature, including personal or bodily injury (including death), property damage, or other harm for which recovery of damages is sought that is found by a court of competent jurisdiction to be caused solely by the negligent act, error, or omission of the Company, any agent, officer, director, representative, employee, affiliate, or subcontractor of the Company, or their respective officers, agents, employees, directors, or representatives, while installing, repairing or maintaining facilities in a public right-of-way. The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors, or subcontractors. If the Company and City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City and without waiving any defenses of the parties. This section is solely for the benefit of the City and Company and does not create or grant any rights, contractual or otherwise, to any other person or entity.

B. The Company or City shall promptly advise the other in writing of any known claim or demand against the Company or City related to or arising out of the Company's activities in a public right-of-way.

C. In the event of joint and concurrent negligence or fault of both the Company and the City, Company will be responsible for its defense costs and City will be responsible for its defense costs.

D. In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Company shall, upon notice from any of the Indemnitees, at Company's sole cost and expense, resist and defend the same with legal counsel selected by Company; provided, however, that Company shall not admit liability or waive immunity in any such matter on behalf of the Indemnitees without their written consent and provided further that Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of Company. Company's obligation to defend shall apply regardless of whether City is solely or concurrently negligent provided that Indemnitees may be held responsible for the cost of such defense paid for by the Company. The Indemnitees shall give Company prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section 13. Nothing herein shall be deemed to prevent the Indemnitees at their election and at their own expense from cooperating with Company and participating in the defense of any litigation by their own counsel. If Company fails to retain defense counsel within seven (7) business days after receipt of Indemnitee's written notice that Indemnitee is invoking its right to indemnification under this Franchise, Indemnitees shall have the right to retain defense counsel on their own behalf, and Company shall be liable for all defense costs incurred by Indemnitees.

E. In further consideration of and for granting this franchise, Company stipulates there are additional indemnity provisions in the Amarillo Municipal Code of Ordinances, Chapter 4-6, Article V, by which the Company is also bound to City/Indemnitee.

SECTION 5. LIABILITY INSURANCE.

A. Company shall, at its sole cost and expense, obtain, maintain, and provide, throughout the term of this Franchise, insurance in accordance with City ordinances; provided, however, that Company may instead meet the insurance requirements of City Code chapter 4-6, either by a Company approved formal plan of self-insurance maintained in accordance with sound accounting and risk-management practices or by obtaining coverage from an insurance company authorized to issue insurance in this state.

B. Company agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, the following required provisions:

1. Except in the case of workers compensation insurance, name the City of Amarillo and its officers, employees and elected representatives as additional insureds to all applicable coverages as their interest as property owner.
2. State that coverage shall not be canceled, nonrenewed or materially changed except after thirty (30) days written notice by certified

mail to: City of Amarillo Purchasing Agent, 509 E. 7th Street,
Amarillo, Texas 79101-2539.

3. Waive subrogation against the City of Amarillo, its officers and employees, for bodily injury (including death), property damage or any other loss.
4. Provide that the Company's insurance is primary insurance with respect to the City of Amarillo, its officers, employees and elected representatives.

C. The Company will provide proof of insurance in accordance with this Franchise within thirty (30) days after the effective date of the Franchise and by February 1st of each year thereafter. If the Company elects to self-insure, a written record describing the parameters of self insurance by the Company shall be provided to the City annually and upon substantial change in the nature of its coverage under this section. Company will not be required to furnish separate proof when applying for permits. However, all Company contractors and subcontractors will be required to provide proof of insurance when applying for permits under this Franchise unless said contractors or subcontractors has previously provided such insurance within the last twelve months of the permit application.

SECTION 6. NON-EXCLUSIVE FRANCHISE.

This Franchise is not exclusive, and nothing herein contained shall be construed so as to prevent the City from granting other like or similar rights, privileges and franchises to any other person, firm, or corporation.

SECTION 7. COMPENSATION TO THE CITY.

A. As compensation for the rights and privileges herein conferred, Company shall pay to the City a franchise fee in the amount of five percent (5%) of the Company's Gross Receipts, received from SPS customers, for electricity delivered by SPS within the City until the Company adopts customer choice. After the Company adopts customer choice, the parties agree that the Company will pay a franchise fee calculated on the number of kilowatt hours delivered within the City, as contemplated by § 33.008 of the Utilities Code, to be negotiated by the parties at that time. Unless otherwise ordered by the Public Utility Commission of Texas, or otherwise agreed to by the City and SPS, SPS will continue its prior practices for recovering municipal franchise fee payments to the City. Specifically, the current practice within the City is that franchise fees paid to the City in excess of the percentage authorized in the Company's tariff to be included in base rates are surcharged in the City. These payments shall be exclusive of and in addition to all other general municipal taxes of whatever nature, including but not limited to ad valorem taxes, sales and use taxes and special taxes and assessments for public improvements. During the periods for which payments are made for this Franchise to use the Public Rights-of-Way of the City, the payments shall be (insofar as the City has legal power so as to provide and agree) in lieu of and shall be accepted as payment for all of the Company's obligations to pay municipal occupation taxes, assessments, municipal charges, fees, easement taxes, franchise

taxes, license, permit and inspection fees or charges, street taxes, bonds, street or alley rentals, and all other taxes, charges, levies, fees and rentals of whatsoever kind and character which the City may impose or hereafter be authorized or empowered to levy and collect, excepting those identified above as exclusive of and in addition to the monthly payments.

B. Such payments shall be made on a monthly basis, on or before the fifteenth (15th) day following the end of each calendar month. Payments under this Franchise shall commence upon execution hereof, so that there will not be any period after the expiration of the preceding franchise in which the City does not receive compensation from the Company for its occupancy of the Public Right-of-Way.

C. For purposes of this section, Gross Receipts for electricity delivered shall include receipts from the following:

- (1) All sales of electricity by Company, net of customer credits, to residential, commercial, and industrial customers within the corporate limits of the City.
- (2) For all service classifications, the charges addressed in subsection (1), above, shall include Service Availability Charges, Energy Charges, Demand Charges, and Fuel Charges and Surcharges.
- (3) All revenues received by the Company from customers within the City related to charges for fuel, or fuel cost recovery charges, based upon the consumption of the customer.

D. With each payment of compensation required by Section 7, Company shall furnish to the City a statement, executed by an authorized officer of Company or designee, providing the Gross Receipts, itemized as set forth in Section 7.C., or, after the Company adopts customer choice, the kilowatt hours delivered within the City and the amount of payment for the period covered by the payment.

E. If either party discovers that Company has failed to pay the entire or correct amount of compensation due, the correct amount shall be determined by mutual agreement between the City and Company and the City shall be paid by Company within thirty (30) calendar days of such determination. Any overpayment to the City through error or otherwise will, at the sole option of the City, either be refunded or offset against the next payment due from Company. Acceptance by the City of any payment due under this Section shall not be deemed to be a waiver by the City of any breach of this Franchise, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due or from collecting any balance due to the City.

F. Interest on late payments shall be calculated in accordance with § 183.003, Tex. Util. Code, as amended from time to time.

G. No taxes, fees, or other payments by Company to the City, including, but not limited to, ad valorem taxes, shall reduce the franchise fees payable to City hereunder, except as agreed to by the City in Section 7.

SECTION 8. RECORDS.

A. Company shall use the system of accounts and the forms of books, accounts, records and memoranda prescribed by the Public Utility Commission of Texas, or as mutually agreed to by the City and the Company, except that the City may require the keeping of certain additional records or accounts not inconsistent therewith. Should the Public Utility Commission of Texas cease to exist, the City retains the right to require the Company to maintain a system of accounts and forms of books and accounts and memoranda prescribed either by the Federal Energy Regulatory Commission or the National Association of Regulatory Utility Commissions or the successor of either of these organization as mutually agreed to by the City and the Company.

B. The City may, if it sees fit, upon reasonable notice to the Company, have the books and records of the Company examined by representatives of the City to ascertain the correctness of the reports agreed to be filed herein, as well as the Company's compliance with all other provisions of this Franchise.

C. The Company shall make available to the City's representative during the Company's regular business hours and upon reasonable notice, such personnel and records as the City may, in its reasonable discretion, request in order to complete any compliance review and shall make no charge to the City therefore. The Company shall assist the City in its review by providing all requested information no later than thirty-five (35) days after receipt of a request.

D. With respect to any review for compliance with Section 7:

- (1) If as the result of any City audit, Company is refunded/credited for an overpayment or pays the City for an underpayment of the franchise fee, such refund/credit or payment shall be made pursuant to the terms established in Section 7.G.
- (2) If as a result of a subsequent franchise fee audit initiated within two years of a prior audit which resulted in Company making a payment to the City due to an underpayment of more than five percent (5%), and Company is required to make another payment to the City due to a subsequent underpayment of the franchise fee of more than five percent (5%), then City may immediately treat such subsequent underpayment as an Uncured Event of Default and exercise the remedies provided for in Section 13.C.
- (3) If the results of any audit indicate the Company underpaid the franchise fee by more than five percent (5%), then the Company shall pay the reasonable costs of the audit. City agrees that any audit shall be performed in good faith.
- (4) If the results of the audit indicate that the Company underpaid the franchise fee by more than five percent (5%), and Company is unable to produce contrary evidence which, in City's reasonable judgment, is satisfactory to demonstrate to City that the results of the audit are not accurate, then, notwithstanding subsection (1), interest on the total amount of underpayment shall be paid at the

interest rate described in Section 7.G. plus two percent (2%), and interest shall be calculated from the time the original amount was due.

- (5) Any additional amount due to City hereunder with respect to a review for compliance with Section 7 shall be paid within thirty (30) days from the date of the compliance invoice. Notwithstanding subsection (1), any amount not paid within thirty (30) days from the date of the invoice will cause interest to be payable at the interest rate described in Section 7.G plus 2% on the entire amount from the date of compliance invoice.

E. With respect to all other reviews conducted by City representatives that result in any findings of non-compliance with this Franchise, Section 13 shall govern the process of notification, opportunity to cure, and any assessment of liquidated damages.

F. The City agrees to maintain the confidentiality of any non-public information obtained from Company to the extent allowed by law. Company shall clearly identify information that it believes to be of a proprietary nature or confidential at the time the information is provided to City. City shall not be liable to Company for the release of any information the City is required to release by law, subpoena, or court order. City shall provide notice to Company of any request for release of any information previously designated by Company as proprietary or non-public information prior to releasing the information so as to allow Company adequate time to pursue available remedies for protection. If the City receives a request under the Texas Public Information Act that includes information previously designated by Company as proprietary or confidential information, City will request an opinion from the Texas Attorney General as to the confidential or the proprietary nature of the document(s). The City also will provide Company with a copy of this notification, and thereafter Company is responsible for establishing that an exception under the Texas Public Information Act allows the City to withhold the information. Nothing herein shall be construed so as to prevent City from sharing Company information with City's employees, contractors, or auditors as necessary to exercise City's rights under this agreement, with appropriate promises from such persons to comply with this subsection.

SECTION 9. MODIFICATIONS TO FRANCHISE.

A. Should either Company or the City have cause to believe that a change in circumstances relating to the terms of this Franchise may exist, it may request that the other party provide it with a reasonable amount of information to assist in determining whether a change in circumstances has taken place.

B. Should either party hereto determine that based on a change in circumstances, it is in the best interest to renegotiate all or some of the provisions of this Franchise, then the other party agrees to enter into good faith negotiations. Said negotiations shall involve reasonable, diligent, and timely discussions about the pertinent issues and a resolute attempt to settle those issues. The obligation to engage in such negotiations does not obligate either party to agree to an amendment of the Franchise as a result of such negotiations. A failure to agree does not show a

lack of good faith. If, as a result of renegotiation, the City and Company agree to a change in a provision of this Franchise, the change shall become effective upon passage of an ordinance by the City in accordance with the City Charter and acceptance of the amendment by Company.

SECTION 10. WORK BY OTHERS.

A. The City reserves the right to lay, and/or permit to be laid, storm, sewer, gas, water, wastewater and other pipe lines, cables, and conduits, or other improvements and to do and permit to be done any underground or overhead work that may be necessary or proper in, across, along, over, or under a Public Rights-of-Way occupied by Company. The City also reserves the right to change in any manner any curb, sidewalk, highway, alley, public way, street, utility lines, storm sewers, drainage basins, drainage ditches, etc.

B. The Company shall relocate its facilities at its expense to permit the widening, straightening, or any change whatsoever of a street, including, but not limited to the addition of any acceleration, deceleration, center or side turn lanes, sidewalks, alleys, and like property, provided that the City shall provide Company with at least thirty (30) days notice and shall specify a new location for such facilities along the Public Rights-of-Way. When Company is required by City to remove or relocate its poles, towers, conduits, cables, and other facilities to accommodate construction of streets and alleys by City, and Company is eligible under Federal, State, County, City or other local agencies or programs for reimbursement of costs and expenses incurred by Company as a result of such removal or relocation and such reimbursement is required to be handled through City, Company costs and expenses shall be included in any application by City for reimbursement, if Company submits its cost and expense documentation to City prior to the filing of the application. City shall provide reasonable notice to Company of the deadline for Company to submit documentation of the costs and expenses of such relocation to City.

C. If City receives a request for or itself initiates the abandonment of any Public Rights-of-Way in which Company has facilities, Company shall be notified of such and given opportunity to comment about the impact of the proposed abandonment. Any such abandonment shall be conditioned on the grant of a utility easement for Company's right to continue its use of the former Public Rights-of-Way. If the party to whom the Public Right-of-Way is abandoned requests the Company to remove or relocate its facilities and Company agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation.

D. If the City requires the Company to adapt or conform its facilities, or in any manner to alter, relocate, or change its property to enable any other entity that is not a part of the City or the consolidated corporate structure of the Company to use, or use with greater convenience, said Public Right-of-Way, the Company shall not be bound to make such changes until such other entity shall have undertaken, with good and sufficient bond, to reimburse the Company for any costs, loss, or expense which will be caused by, or arises out of such change, alteration, or relocation of Company's property or facilities.

SECTION 11. TRANSFER AND ASSIGNMENT.

The rights granted by this Franchise inure to the benefit of Company and any parent, subsidiary, or affiliate now or hereafter existing. Upon assignment to such parent, subsidiary or affiliate, such entity assumes all obligations of Company hereunder and is bound to the same extent as Company hereunder. Company shall give City written notice within sixty (60) days of assignment to a parent, subsidiary or affiliate. In the event Company assigns this Franchise to someone other than a parent, subsidiary or affiliate (Assignee), Company shall give City notice concurrently with notice provided to the Public Utility Commission of the sale or transfer of assets. Any such assignment shall require that said Assignee assume all obligations of Company and is bound to the same extent as Company hereunder. If, within the first sixty (60) days after assignment to someone other than a parent, subsidiary or affiliate, City shall identify a failure to comply with a material provision of this Franchise, City shall have the right to treat such failure to comply as an Uncured Event of Default and immediately implement the provisions of Section 13, including the right to terminate the Franchise.

SECTION 12. TERM & EFFECTIVE DATE.

The term of this agreement shall be in full force and effect for period of ten (10) years beginning with the Effective Date stated in the Ordinance to which it is attached.

SECTION 13. DEFAULT, REMEDIES AND TERMINATION.

A. Events of Default. The occurrence, at any time during the term of the Franchise, of any one or more of the following events, shall constitute an Event of Default by Company under this Franchise:

- (1) The failure of Company to pay the franchise fee on or before the due dates specified herein.
- (2) Company's breach or violation of any of the terms, covenants, representations or warranties contained herein or Company's failure to perform any material obligation contained herein.
- (3) The underpayment of franchise fees by more than five percent (5%) for two consecutive audit periods.

B. Uncured Events of Default.

- (1) Upon the occurrence of an Event of Default which can be cured by the immediate payment of money to City or a third party, Company shall have thirty (30) calendar days from receipt of written notice from City of an occurrence of such Event of Default to cure same before City may exercise any of its rights or remedies provided for in Section 13.C.
- (2) Upon the occurrence of an Event of Default by Company which cannot be cured by the immediate payment of money to City or a third party, Company shall have sixty (60) calendar days (or such

additional time as may be agreed to by the City) from receipt of written notice from City of an occurrence of such Event of Default to cure same before City may exercise any of its rights or remedies provided for in Section 13.C.

- (3) If the Event is not cured within the time period allowed for curing the Event of Default as provided for herein, such Event of Default shall, without additional notice, become an Uncured Event of Default, which shall entitle City to exercise the remedies provided for in Section 13.C.

C. Remedies. The City shall notify the Company in writing of an alleged Uncured Event of Default as described in Section 13.B, which notice shall specify the alleged failure with reasonable particularity. The Company shall, within thirty (30) calendar days after receipt of such notice or such longer period of time as the City may specify in such notice, either cure such alleged failure or provide a written response to the City that either: (i) documents cure of the default; (ii) provides a plan to cure and sets forth the method and time schedule for accomplishing such cure; or (iii) presents facts and arguments in refuting or defending such Uncured Event of Default. City will review Company's written response and determine the acceptability of the response. If City is not in agreement with Company's response or if the cure is not forthcoming, City shall be entitled to exercise any and all of the following cumulative remedies:

- (1) The commencement of an action against Company at law for monetary damages.
- (2) The commencement of an action in equity seeking injunctive relief or the specific performance of any of the provisions that as a matter of equity, are specifically enforceable.
- (3) The termination of this Franchise in accordance with Section 13.E.

D. Remedies Not Exclusive. The rights and remedies of City and Company set forth in this Franchise shall be in addition to, and not in limitation of, any other rights and remedies provided by law, in equity, or by administrative proceeding before the Public Utility Commission of Texas or the Federal Energy Regulatory Commission, or respective successor or similar governmental agencies. City and Company understand and intend that such remedies shall be cumulative to the maximum extent permitted by law and the exercise by City of any one or more of such remedies shall not preclude the exercise by City, at the same or different times, of any other such remedies for the same failure to cure. However, notwithstanding this Section or any other provision of this Franchise Agreement, City shall not recover both liquidated damages and actual damages for the same violation, breach, or noncompliance, either under this Section or under any other provision of this Franchise.

E. Termination. In accordance with the provisions of Section 13.C, this Franchise may be terminated upon thirty (30) business day's prior written notice to Company. City shall notify Company in writing not less than seventy-two (72) hours in advance of the City Council meeting at which the question of forfeiture or termination shall be considered, and Company shall have the right to appear before the City Council in person or by counsel and raise any

objections or defenses Company may have that are relevant to the proposed forfeiture or termination. The decision of the City Council shall be final but may be appealed to any court or regulatory authority having jurisdiction. Until the termination becomes effective, the provisions of this Franchise shall remain in effect for all purposes.

F. The failure of the City to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City unless said waiver or relinquishment is in writing and signed by the City.

SECTION 14. PUBLIC PURPOSE.

All of the provisions contained in this Agreement are hereby declared to be for a public purpose, and are in the interests of the health, safety, and welfare of the general public.

SECTION 15. FUTURE CONTINGENCIES.

Notwithstanding anything contained in this Agreement to the contrary, in the event that (a) this Agreement or any part hereof, or (b) any procedure set forth in this Agreement, or (c) any compensation due the City under this Agreement becomes, or is declared or determined by judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unrecoverable, unenforceable, void, unlawful or otherwise inapplicable, in whole or in part, the Company and the City agree that they will meet and negotiate in good faith to obtain a new Agreement that is in compliance with the authority's decision or enactment; and unless explicitly prohibited, the new Agreement shall provide the City with a level of compensation comparable to that set forth in this so long as such compensation is recoverable by the Company in a mutually agreeable manner permitted Agreement by law for the unexpired portion of the term of this Agreement.

SECTION 16. SEVERABILITY.

If any provision, section, subsection, sentence, clause or phrase of this Agreement is for any reason held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portions of this Agreement shall not be affected thereby, it being the intent of the parties in adopting this Franchise that no provision hereof shall be inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision, or regulation, and to that end, all provisions of this Agreement are declared to be severable.

SECTION 17. NOTICE.

Any notices required or desired to be given from one party to the other party to this Ordinance shall be in writing and shall be given and shall be deemed to have been served and received if (i) delivered in person to the address set forth below; (ii) deposited in an official

depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party’s address for notice.

CITY

City Manager
City of Amarillo
509 E. 7th Street
Amarillo, TX 79101-2539

COMPANY

SECTION 18. GOVERNING LAW.

This Franchise shall be governed by and construed in accordance with the laws of the State of Texas.

SECTION 19. ACCEPTANCE.

In order to accept this Franchise, Company must file with the City Secretary its written acceptance of this Franchise within thirty (30) days after its final passage and approval by City. Company shall pay all publication expense regarding notification of the Franchise ordinance. Company, by its acceptance of this Franchise, agrees that all such lawful regulatory powers and rights as the same may be from time to time vested in the City shall be in full force and effect and subject to the exercise thereof by the City at any time.

SECTION 20. FUTURE AMENDMENTS.

This Franchise may be amended only by the mutual written agreement of the City and the Company.

CITY OF AMARILLO

SOUTHWESTERN PUBLIC SERVICE CO.

By: _____
Alan M. Taylor
City Manager

By: _____
David Eves
President

ATTEST:

ATTEST:

By: _____
Donna DeRight
City Secretary

By: _____

ORDINANCE NO. 7151

AN ORDINANCE OF THE CITY OF AMARILLO, TEXAS: GRANTING TO SOUTHWESTERN PUBLIC SERVICE COMPANY, ITS SUBSIDIARIES, SUCCESSORS, ASSIGNS, THE NON-EXCLUSIVE RIGHT TO USE AND OCCUPY RIGHT-OF-WAY WITHIN THE CITY FOR THE CONSTRUCTION AND OPERATION OF AN ELECTRIC TRANSMISSION AND DISTRIBUTION SYSTEM; PRESCRIBING CONDITIONS GOVERNING THE USE OF THE PUBLIC RIGHTS-OF-WAY; PROVIDING FOR COMPENSATION; PROVIDING FOR AN EFFECTIVE DATE AND TERM; PROVIDING FOR WRITTEN ACCEPTANCE; PROVIDING REPEALER CLAUSE; FINDING COMPLIANCE WITH OPEN MEETINGS ACT.

BE IT ORDAINED BY THE CITY COMISSION OF THE CITY OF AMARILLO, TEXAS, THAT:

SECTION 1. GRANT OF AUTHORITY.

There is hereby granted to Southwestern Public Service Company, its successors and assigns (herein called "Company"), the right, privilege and franchise ("Franchise") to construct, extend, maintain and operate in, along, under and across the Public Rights-of-Way of Amarillo, Texas as it exists as of the effective date of this Franchise and such additional areas as may be included in the corporate limits of the City during the term of this Franchise. (herein called "City") an Electric Transmission and Distribution System ("System") consisting of electric power lines, with all necessary or desirable appurtenances (including underground conduits, poles, towers, wires, transmission lines and other structures, and telephone and communication lines for its own use), for the purpose of supplying electricity to the City, the inhabitants thereof, and persons, firms and corporations beyond the corporate limits thereof.

SECTION 2. PURPOSE.

A. The provisions set forth in this Ordinance represent the terms and conditions under which Company shall construct, operate, and maintain the System within the City.

B. Not included in this Franchise are any facilities (including any equipment attached in any way to Company's facilities, whether owned by the Company or not) that provide data delivery, cable service, telephone service, and/or any other service or product not required by Company in support of Company's electric operations. To the extent that Company installs or permits to be installed facilities in the City's rights-of-way that are not necessary for the transmission and delivery of electric service, Company will seek a separate franchise from City. The Company shall not be required to obtain a separate franchise in order for the Company to allow "pole attachments," including attachment to a pole, duct, conduit, or other facility owned or controlled by the Company in the Public Right-of-Way.

SECTION 3. OCCUPATION OF RIGHT-OF-WAY.

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the City Code related to right-of-ways, as of the effective date of the Franchise and as amended from time to time.

SECTION 4. COMPENSATION TO THE CITY.

A. As compensation for the rights and privileges herein conferred, Company shall pay to the City a franchise fee in the amount of five percent (5%) of the Company's Gross Receipts, received from SPS customers, for electricity delivered by SPS within the City until the Company adopts customer choice, as further described in the attached Franchise Agreement.

SECTION 5. OTHER TERMS.

The attached Franchise Agreement contains further and additional terms, conditions, duties, and assurances binding upon the City and the Company, each and all of which are incorporated into this ordinance by this reference as though fully set forth here.

SECTION 6. TERM & EFFECTIVE DATE.

The term of this agreement shall be in full force and effect for period of ten (10) years beginning with the Effective Date hereof. If Company accepts this Ordinance, by the filing of its written acceptance, this Ordinance shall be effective as of _____, 2009 and end _____, 2019.

SECTION 7. PUBLIC PURPOSE.

All of the provisions contained in this Ordinance are hereby declared to be for a public purpose, and are in the interests of the health, safety, and welfare of the general public.

SECTION 8. FUTURE CONTINGENCIES.

Notwithstanding anything contained in this Ordinance to the contrary, in the event that (a) this Ordinance or any part hereof, or (b) any procedure set forth in this Ordinance, or (c) any compensation due the City under this Ordinance becomes, or is declared or determined by judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unrecoverable, unenforceable, void, unlawful or otherwise inapplicable, in whole or in part, the Company and the City agree to meet and negotiate in good faith to obtain a new Ordinance that is in compliance with the authority's decision or enactment; and unless explicitly prohibited, the new Ordinance shall provide the City with a level of compensation comparable to that set forth in this Ordinance so long as such compensation is recoverable by the Company in a mutually agreeable manner permitted by law for the unexpired portion of the term of this Ordinance.

SECTION 9. SEVERABILITY.

If any provision, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portions of this Ordinance shall not be affected thereby, it being the intent of the parties in adopting this Franchise that no provision hereof shall be inoperative or fail

by reason of any unconstitutionality or invalidity of any other portion, provision, or regulation, and to that end, all provisions of this Ordinance are declared to be severable.

SECTION 10. REPEALER.

All other electric franchise ordinances and parts of such ordinances or resolutions in conflict with this ordinance are hereby repealed to the extent of conflict with this franchise ordinance.

SECTION 11. ORDINANCE PASSED AT PUBLIC MEETING.

It is hereby officially found that the meeting at which this Ordinance is passed is open to the public and that due notice of this meeting was posted, all as required by law.

PASSED and approved by the City Commission of the City of Amarillo, Texas upon First Reading on _____, 2009, and upon Second and Final Reading on _____, 2009.

Debra McCartt, Mayor

ATTEST:

Donna DeRight, City Secretary